

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 1:12-CR-132

v.

HON. ROBERT HOLMES BELL

JOSE HERNANDEZ,

Defendant.

/

MEMORANDUM OPINION AND ORDER

Defendant Jose Hernandez has filed a motion for modification or reduction of sentence (ECF No. 1379) pursuant to 18 U.S.C. §3582(c)(2) on the basis of Amendment 782 of the United States Sentencing Guidelines, made retroactive by the Sentencing Commission.

Section 3582(c)(2) permits a court to reduce the term of imprisonment of a defendant who has been sentenced based on a sentencing range that has subsequently been lowered by the Sentencing Commission. 18 U.S.C. § 3582(c)(2). Amendment 782 of the United States Sentencing Guidelines reduced by two levels the offense levels assigned to the quantities that trigger the statutory mandatory minimum penalties in U.S.S.G. §§ 2D1.1 and 2D1.11. These modifications were made retroactive effective November 1, 2014. U.S.S.G. § 1B1.10. The Probation Department filed a sentence modification report on November 12, 2015 (ECF No. 1587). Since Defendant's amended guideline range is higher than the range at his original sentencing, the Probation Department recommends that Defendant is ineligible for a reduction in sentence under Guideline Amendment 782. Defense counsel has filed a response to the report of eligibility, ECF No. 1593,

and wishes to preserve the issue for future consideration should the law change. The government also filed a response to the sentence modification report (ECF No. 1594), concurring with the probation department's assessment.

Therefore, IT IS HEREBY ORDERED that Defendant's motion for modification of sentence (ECF No. 1379) pursuant to 18 U.S.C. § 3582(c)(2) is DENIED.

Dated: December 14, 2015

/s/ Robert Holmes Bell

ROBERT HOLMES BELL

UNITED STATES DISTRICT JUDGE